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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| **In the Matter of** | ) | |
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| **Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers** | ) | **CC Docket No. 00-256** |
| | ) | |
| **Federal-State Joint Board on Universal Service** | ) | **CC Docket No. 96-45** |
| | ) | |
| **Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return Regulation** | ) | **CC Docket No. 98-77** |
| | ) | |
| **Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers** | ) | **CC Docket No. 98-166** |
| | ) | |

# WORLDCOM COMMENTS

WORLDCOM, INC.

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February 26, 2000

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## WORLDCOM COMMENTS

### I. Introduction and Summary

WorldCom, Inc. (WorldCom) hereby submits its comments on the access reform and universal service plan submitted to the Commission by the Multi-Association Group (MAG). The MAG plan would substantially revise the Commission's regulatory regime for non-price cap carriers by giving such carriers the option to switch to a new form of "incentive" regulation. The MAG plan would also (1) shift recovery of non-price cap carriers' NTS costs from the per-minute CCL to the SLC; (2) reduce the average per-minute access charge for ILECs electing incentive regulation to 1.6 cents per minute; and

(3) shift any remaining residual requirement to a new universal service fund, the Rate Averaging Support (RAS) fund.

WorldCom supports, in principle, the types of reforms that are contemplated by the MAG plan. WorldCom supports, for example, measures that would shift the recovery of non-traffic sensitive (NTS) loop costs from the per-minute carrier common line (CCL) charge to the flat-rated SLC. WorldCom also supports measures to reduce per-minute access charges to a level that is closer to forward-looking economic cost, and supports measures that would shift implicit universal service support that is currently recovered through interstate access charges to an explicit universal service fund.

However, the MAG plan's strengths are outweighed by obvious weaknesses. The Commission should not adopt the MAG plan in its current form because, as currently structured, the MAG plan would increase the level of ILEC revenues relative to the status quo without any demonstration that such an increase is justified. This revenue increase would benefit not only the smallest rural telephone companies and cooperatives, but also ALLTEL and TDS and other large corporations. The MAG plan would also benefit some of the largest corporations in the nation -- the Bell companies – because it would increase the value of their rural exchanges and thus allow them to sell these exchanges at a higher price.

The increase in ILEC revenues would translate into an increased burden on ILEC customers and, in particular, contributors to the universal service fund. While per-minute interstate access charges would decrease somewhat under the MAG plan, this reduction would be largely offset by an excessive increase in the size of the universal service fund. And the reduction in per-minute access charges would primarily benefit the non-price cap carriers who, in many cases, have the largest share of the long distance market in non-price cap ILEC territories.

## II. The MAG Plan is Overly Generous to the ILECs

Under the MAG plan, a non-price cap carrier would be permitted to choose among a variety of ratemaking options for each of its study areas. First, the ILEC would be able to choose between an "incentive regulation" scheme ("Path A") and rate of return regulation ("Path B"). Then, the ILEC would be able to choose between operating the study area in the NECA pool or outside the pool. And, finally, for Path A study areas, the ILEC would have up to five years to actually convert from rate of return to incentive regulation.

Under the MAG plan, "incentive" study areas would receive revenues on a fixed per-line basis, rather than on a cost or average schedule basis. An "incentive" ILEC's allowed "revenue per line" (RPL) would be based on the most recent cost study or average schedule settlement prior to the switch to incentive regulation, and would then be increased each year to adjust for inflation.

While it is obvious that an inflation-adjusted RPL scheme provides opportunities for an ILEC to increase its earnings, this revenue-escalation scheme does not "balance fairly the interests of customers and LEC shareholders."[1]

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[1]See Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, 6796 (1990) (LEC Price Cap Order).

*First*, the costs that would be used to initialize an ILEC's allowed RPL would be inflated by two factors:

- As the record in CC Docket No. 98-166 shows, the 11.25 percent rate of return that would be used to initialize the RPL is far in excess of the ILECs' current cost of capital.
- The costs that would be used to initialize the RPL would reflect the inefficiencies of rate of return regulation. In fact, the MAG plan actually creates incentives and opportunities for the ILECs to pad their rate base prior to shifting to incentive regulation. By giving the ILECs up to five years to shift to incentive regulation, the MAG plan allows ILECs to increase investment and expense levels before locking in their allowed RPL.

*Second,* an inflation-adjusted RPL scheme provides weak or nonexistent efficiency incentives. For an incentive regulation plan to "balance fairly the interests of customers and LEC shareholders," shareholders should benefit only if the LEC is able to outperform a baseline level of productivity growth. There is, however, considerable evidence that inflation-adjusted RPL does not present a sufficiently high hurdle.

By proposing an inflation-adjusted RPL scheme, the MAG proponents are assuming, in effect, that non-price cap carriers' rate of productivity growth relative to the economy as a whole is zero. This is an unrealistic assumption, particularly since switch costs are declining rapidly and are likely to continue declining as the industry shifts to new switching technologies. Furthermore, rural price cap ILECs such as Citizens and rural GTE, Frontier, and Sprint LECs have operated successfully for many years under a price cap plan that incorporated a 5.3 percent or a 6.5 percent X-factor.

*Third*, under the MAG plan, many rural Path A and Path B ILECs would see an increase in their High Cost Loop (HCL) fund support flow. The MAG plan proposes to eliminate both the "indexed cap" and the corporate expense limitation on the HCL fund. Both the indexed cap and the corporate expense limitation were designed in part to provide efficiency incentives for non-price cap carriers.

*Fourth*, even if the Path A incentive regulation scheme were modified to provide true efficiency incentives, the MAG plan would allow ILECs to evade these incentives by simply electing the "Path B" rate of return option. Even worse, because MAG allows ILECs to choose between Path A and Path B on a study area-by-study area basis, an ILEC can evade efficiency incentives by shifting costs from Path A "incentive" study areas to Path B study areas or to Path A study areas that have yet to make the transition to incentive regulation. The detection of non-price cap carrier cost-shifting would be extremely difficult, given that these carriers are subject to relaxed oversight of their accounting practices.

*Fifth*, the MAG plan would even reduce the efficiency incentives for price cap ILECs. As part of its proposal, MAG proposes to, in effect, eliminate the Section 61.42(c) "all or nothing" rule for all mergers and acquisitions, including those in which a price cap carrier acquires a non-price cap carrier.[2] Specifically, the MAG plan would

[2]MAG Proposal, Exhibit 3, proposed rule 61.41(c)(4).

allow a price cap ILEC that acquires a non-price cap carrier to leave the non-price cap carrier under Path A incentive regulation or Path B rate of return regulation.[3]

As an initial matter, elimination of the all or nothing rule in cases where a price cap carrier acquires a non-price cap carrier would deprive the acquired carrier's customers of the benefits of the efficiency gains achievable by price cap carriers, including the lower "target" access rates that apply to price cap carriers. Moreover, elimination of the "all or nothing" rule would open the door to precisely the type of cost-shifting that this rule was designed to prevent (particularly if the acquired ILEC were a Path B rate of return carrier or a Path A carrier that had yet to shift to incentive regulation).[4] MAG has not even attempted to show that LEC holding companies no longer have "the means and the motive to shift costs improperly . . . , to the detriment of ratepayers."[5] There would be no reasoned basis for the Commission to now change course and eliminate the all or nothing rule.

Elimination of the all or nothing rule could have especially serious consequences for customers of Verizon's Puerto Rico Telephone Company (PRTC). As PRTC has noted, MAG's proposal to eliminate the all or nothing rule would apparently allow PRTC to remain under rate of return regulation.[6] Under the all or nothing rule, PRTC

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[3]Id.

[4]LEC Price Cap Order, 5 FCC Rcd at 6819-6820.

[5]Id.

[6]Puerto Rico Telephone Company, Supplement to Petition for Waiver by Puerto Rico Telephone Company, Inc., February 12, 2001, CCB/CPD No. 99-36, at 10-11.

should have converted to price cap regulation after its acquisition by GTE in 1999. But PRTC has delayed this transition by seeking a waiver of the all or nothing rule -- ignoring the fact that, during the GTE/PRTC transfer of control proceeding, GTE had stated explicitly that it was "well aware of its obligation to convert PRTC to price cap regulation and [would] do so in full compliance with the Commission's rules."[7]

As WorldCom has previously explained, there would be no justification for allowing the notoriously inefficient PRTC to remain a non-price cap carrier -- whether by waiver or via the rule change that MAG is proposing.[8] Now that PRTC is an affiliate of Verizon, and can benefit from the economies of scale and scope inherent in being part of the nation's largest local exchange carrier, it should be subject to the efficiency incentives of price cap regulation. As the Commission concluded in the GTE/PRTC Order, "privatization and the implementation of price cap regulation for PRTC after the acquisition are the best means to achieve lower rates."[9]

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[7]GTE Reply Comments, Report No. LB-98-58, File Nos. 03373-03384-CL-TC-98 et al., October 20, 1998, at 32.

[8]MCI WorldCom Opposition, CCB/CPD No. 99-36, January 11, 2000.

[9]Applications of Puerto Rico Telephone Authority and GTE Holdings (Puerto Rico) LLC for Consent to Transfer Control of Licenses and Authorization Held by Puerto Rico Telephone Company and Cellulares Telefonica, Inc., Memorandum Opinion and Order, 14 FCC Rcd at 3133 (GTE/PRTC Order).

## III. NTS Costs, Universal Service Contributions and LNP Costs Should be Recovered from End Users, not Through Per-Minute Access Charges or USF

Because it fails to assign certain costs to end user charges, the MAG plan would inflate both the universal service fund and interstate per-minute access charges.

### A. Implicit Support Should be Eliminated by Increasing Multiline Business SLC Caps in One Step, Not by Transferring it to the RAS Fund

The Commission should require non-price cap ILECs to increase the multiline business SLC cap from \$6.00 to \$9.20 in one step, rather than phasing in the increase over three years. As the Commission concluded in the Access Reform Order, increasing SLC caps to recover a greater proportion of interstate-allocated non-traffic sensitive costs is the most basic step that can be taken to eliminate implicit support.[10] By delaying part of the SLC cap increase to the second or third year of the MAG plan, the Commission would only delay the elimination of implicit support from interstate access charges or, in the case of the Path A mechanism, inflate the size of the RAS fund unnecessarily during the first two years of the plan.[11]

Increasing the SLC caps to \$9.20 in one step would have no impact on subscribership. As the Commission noted in the Access Reform Order, the \$6.00

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[10]Access Charge Reform, First Report and Order, CC Docket No. 96-262, released May 16, 1997, at ¶¶ 75-77 (Access Reform Order).

[11]NECA reports that common line pool members have 2,460,143 multiline business lines. Thus, in the first year of the MAG plan, with a multiline business SLC cap of \$7.07, the RAS fund would be approximately \$63 million larger than if the SLC cap were \$9.20. In the second year, with a multiline business SLC cap of \$8.13, the RAS fund would be approximately \$32 million larger than if the SLC cap were \$9.20.

multiline business SLC cap would have increased to $9.00 by 1996 had it simply been adjusted for inflation. Moreover, it is clear that the 1997 increase in price cap carriers' multiline business SLC cap has had no impact on price cap carriers' subscribership, even though that increase was effected in one step and even though millions of price cap carrier lines are now subject to maximum SLC of $9.20.[12]

### B. Centrex SLC Caps Should Be the Same as Multiline Business SLC Caps

The Commission should not adopt MAG's proposal to reduce the Centrex SLC cap to one-ninth of the SLC cap for multiline business lines.[13] By reducing the proportion of interstate-allocated NTS costs that are recovered from end users, the proposed change in the Centrex SLC cap would only inflate per-minute access charges or the size of the RAS fund. Such a step would be contrary to the Commission's well-established policy of eliminating implicit support by adopting, whenever possible, a rate structure that permits ILECs to recover their non-traffic sensitive costs directly from end users.[14] Indeed, the Commission has consistently declined to set Centrex SLC caps

[12]Among the price cap LECs with study areas that assess a $9.20 multiline business SLC are Qwest (Colorado, Montana, New Mexico, Wyoming, and Idaho), GTE (most study areas, including Hawaii, Texas, and Washington), Sprint, and Citizens.

[13]MAG Proposal, Exhibit 3-16, proposed rule 69.104.

[14]Access Reform Order at ¶ 77.

using a line equivalency ratio, noting that "[i]f Centrex uses more lines [than a PBX], then Centrex necessarily creates more line costs."[15]

## C. ILEC Universal Service Contributions Should be Recovered Through an End User Charge

In TOPUC v. FCC, the Fifth Circuit concluded that the Commission could not require incumbent LECs to recover their universal service contributions through access charges.[16] Under the CALLS plan, the price cap ILECs elected to remove their universal service contributions from access charges and instead recover these contributions through a flat-rated per-line charge.[17] It appears, however, that the MAG proponents do not intend to establish an end user USF recovery charge.

For Path A carriers, the MAG proponents' decision not to recover universal service contributions through an end user charge creates an anomaly. Specifically, it creates a circular effect by which the NECA pool's universal service contribution obligation is itself included in the RAS fund. This circular effect results from the fact that the RAS fund recovers any residual revenue requirement not recovered through the SLC, per-minute access charges, Long Term Support (LTS), and Local Switching Support (LSS). Because universal service contributions increase the NECA pool's

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[15]MTS and WATS Market Structure, Memorandum Opinion and Order, 97 F.C.C. 2d 682, 700 (1983).

[16]Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393, 425 (5th Cir.1999) (TOPUC v. FCC).

[17]Access Charge Reform, Sixth Report and Order, released May 31, 2000 at ¶ 218 (CALLS Order).

revenue requirement, they also increase the residual revenue requirement that is then recovered through the RAS fund. Inclusion of the NECA pool's USF contribution obligation in the RAS fund would inflate the RAS fund by $40 million or more.[18]

The Commission should not permit Path A ILECs to include their USF obligation when sizing the RAS fund. Funding NECA's universal service contributions from the universal service fund would violate Section 254(e)'s requirement that carriers use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[19]

## D. Local Number Portability Costs Should Not Be Recovered From Universal Service Support

The MAG plan would allow ILECs' universal service support to be adjusted to reflect costs that Path A and Path B LECs "incur in complying with new state or federal regulations."[20] Among the new federal or state regulations that MAG suggests could trigger a change in universal service support are "regulations concerning number portability."[21]

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[18]NECA's current interstate access rates include a USF contribution amount of approximately $36 million per year. See NECA Tariff F.C.C. No. 5, Transmittal No. 885, December 18, 2000, Exhibit 1.

[19]47 U.S.C. § 204(e).

[20]MAG Proposal, Exhibit 3-6, proposed rule 54.321(a).

[21]Id.

The inclusion of LNP costs in the universal service fund would be inconsistent with Section 52.33(a) of the Commission's rules, which provides that ILECs may recover their carrier-specific costs directly related to providing LNP only through a monthly end user LNP charge or through a number portability query service charge.[22] Moreover, the funding of LNP costs using universal service support would violate the Section 254(e) requirement that universal service funds be used only for supported services. The Commission's forward-looking cost mechanism for non-rural carriers does not provide support for LNP costs.[23]

## IV. The MAG Plan's Universal Service Provisions are Inconsistent with Section 254 of the Act

The universal service provisions of the MAG plan are inconsistent with Section 254's goals that universal service be specific, predictable and sufficient. As the Commission determined in the Universal Service Order, embedded cost approaches such as those proposed by the MAG plan may yield either too much support, thus providing support for inefficient as well as efficient investments, or too little support, thus erecting an entry barrier to new competitors.[24]

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[22] 47 C.F.R. § 52.33(a).

[23] See, e.g., Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, released November 2, 1999 at ¶ 63 n.189 (Universal Service Ninth Report and Order).

[24] Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, released May 8, 1997 at ¶ 228 (Universal Service Order).

At most, the Commission should permit non-price cap carriers to continue using embedded-cost mechanisms for an interim period not to exceed five years. The Commission should make clear, however, that by extending the use of embedded-cost mechanisms it is <u>not</u> reconsidering its selection of a forward-looking cost approach, and should make clear that it is using embedded cost approaches only on an interim basis until it completes work on adapting the synthesis model for use with rural carriers and for determining the implicit support in non-price cap carriers' interstate access charges.

Even if the Commission decides to continue using embedded cost approaches for an interim period, it should not adopt the specific mechanisms proposed by the MAG plan. The MAG proposal, if adopted in its current form, would result in a substantial and unjustified increase in the size of the universal service fund, contrary to the Commission's commitment "to the objective that the fund not be any larger than is necessary to achieve the various goals of section 254."[25]

## A. The Commission Should Constrain the Size of Any "RAS" Fund

While WorldCom supports the creation of an explicit universal service fund to replace implicit support currently collected through non-price cap carriers' interstate access charges, the RAS fund would be unreasonably large. The main problem with the RAS fund is that it is designed as a "make whole fund," providing whatever revenues the NECA pool, and individual ILECs, require in order to achieve their revenue requirement.

[25] <u>Universal Service Ninth Report and Order</u> at ¶ 59.

The "make whole" nature of the RAS fund leads to an inflated fund size, for four primary reasons.

*First*, as discussed above, the residual revenue requirement that ends up in the RAS fund includes a variety of costs that should more properly be recovered through end user charges. These costs include multiline business NTS loop costs (in the first two years of the plan), Centrex loop costs, and the NECA pool's universal service contributions.

*Second*, in violation of Section 254(e), the RAS fund could include costs other than those associated with the provision of supported services, i.e., voice grade access to the public switched telephone network. The RAS fund could include, for example, a portion of the investment and expenses that NECA pool members have incurred to provide special access services[26] or a portion of the investment and expenses that NECA pool members have incurred to provide advanced services.

*Third*, the revenue requirement used to size the RAS fund would include all of the inefficiencies that have resulted from rate of return regulation. And, as discussed above, neither the Path A incentive regulation option nor the Path B rate of return regulation option place an effective constraint on the future growth of the ILECs' revenue requirement.

*Fourth*, the proposed rules appear to provide no opportunity for Commission scrutiny of the projected revenue requirement that NECA would use to size the RAS

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[26]MAG Proposal, Exhibit 3-5, proposed rule 54.319(b)(3).

fund.[27] If this is the case, then the Commission would have no opportunity to determine whether the growth in the RAS fund was reasonable or determine whether the projected revenue requirement used to calculate the RAS fund complied with the Commission's Part 32, Part 64, and Part 69 rules.[28] Indeed, it appears that there would be significantly less scrutiny of NECA's projected revenue requirement under the MAG plan than under the current rules.[29]

To the extent that the Commission allows the ILECs to shift implicit support from interstate access charges to a RAS-type universal service fund, it should recognize the potential for such a fund to support inefficiencies and services that are not included within the definition of universal service. The Commission should, accordingly, take steps to constrain both the initial size of such a fund and the subsequent growth of such a fund. WorldCom notes that the analogous fund adopted in the CALLS Order was capped at an amount ($650 million) that was partially based on the forward-looking cost calculations.[30]

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[27]Under the proposed rules, the RAS fund size would be determined by NECA. MAG Proposal, Exhibit 3-5, proposed rule 54.319(b).

[28]Prior to the transition to incentive regulation, an ILEC's projected revenue requirement would be determined using the Commission's existing rules.

[29]When an ILEC's revenue requirement is recovered solely through interstate access charges, that revenue requirement can be scrutinized during pre-effective tariff review. Moreover, Section 204(a) of the Act gives the Commission the authority to suspend and investigate tariff filings and institute an accounting order.

[30]CALLS Order at ¶ 200.

## B. The Commission Should Retain the Caps on the HCL Fund

The Commission should reject the MAG plan's proposal to eliminate the "indexed cap" and the corporate operations expense limitation on the high cost loop (HCL) fund. Elimination of the caps on the HCL fund could increase the size of that fund by $400 million per year or more.[31] Given that this increase would be on top of the several hundred million dollar increase in the universal service fund that would result from creation of a RAS-type fund, the MAG plan in its current form could easily result in a one or two percentage point increase in the already-high universal service contribution factor.[32]

The MAG proponents have provided no justification for the proposed increase in the HCL fund. They have provided no evidence that the funds available under the indexed cap are not "sufficient" to support the services that are included in the definition of universal service -- particularly when the other revenue streams available under the MAG plan are taken into account. There has been no indication that rural LECs are unable to maintain their quality of service or upgrade facilities at the support levels provided by the capped HCL fund. Indeed, rural ILECs routinely claim that they provide

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[31]Letter from William R. Gillis to Magalie Roman Salas, FCC, November 10, 2000, Attachment 2 (showing projections of HCL support of $1.4 billion in 2005 with an uncapped fund, compared to $1.0 billion with a capped fund). The growth in the HCL fund could be even greater under the MAG plan because the MAG plan would encourage the transfer of exchanges from price cap carriers to rural non-price cap carriers, thus increasing the number of lines eligible for HCL support. See Section IV.C.

[32]At current levels of interstate and international end user revenues (approximately $82 billion/year), the contribution factor increases one percentage point for every $820 million increase in the size of the universal service fund.

a level of service that is equal to or superior to the level of service provided by larger ILECs.

There is no merit to the MAG proponents' suggestion that the size of the HCL fund should be increased in order to provide incentives for rural ILECs to deploy "advanced services."[33] Because the current definition of universal service encompasses only voice-grade access to the public switched network, and does not include advanced services, the provision of support for advanced services would violate Section 254(e)'s requirement that eligible telecommunications carriers use universal service support only for supported services.

### C. The Commission Should Not Eliminate Section 54.305

The MAG plan proposes to eliminate the Commission rules that limit the universal service support that is available to ILECs that acquire exchanges. First, the MAG plan proposes to eliminate Section 54.305 of the Commission's rules, which limits acquiring carriers to receiving only the amount of per-line universal service support for which the exchanges were eligible prior to the transfer.[34] Second, under the MAG plan, non-price cap ILECs that acquire exchanges would no longer be required to obtain a waiver of the rule freezing study area boundaries.[35]

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[33]MAG Plan, Exhibit 1 at 1-17.

[34]Letter from William F. Maher, Jr. to Magalie Roman Salas, FCC, November 21, 2000.

[35]MAG Proposal, Exhibit 3-3, proposed revised definition of "Study Area" in Part 36, Appendix-Glossary.

These proposals, if adopted, would result in an uncontrolled increase in the size of the HCL fund. Absent Section 54.305, many exchanges would become eligible for sharply increased universal service support simply because they had been acquired by a rural ILEC. And, without a requirement that ILECs obtain a waiver of the rule freezing study area boundaries, the Commission would no longer be able to condition such transfers on the acquirer's agreement to limit the amount of additional universal service support drawn from the fund.

The Commission should not eliminate its controls on the universal service support available to acquiring carriers. The MAG proponents have provided no evidence that a substantial increase in universal service support -- simply because an exchange changes hands -- is in the public interest. Even under the current rules, rural carriers that have purchased exchanges from larger carriers have routinely claimed that the transaction will result in modernization of the exchange and improved service to customers.[36] Increasing support levels would only create artificial incentives for large price cap carriers to sell more exchanges, contrary to the Commission's concern that potential universal service support would "influence unduly a carrier's decision to purchase exchanges from other carriers."[37]

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[36]See, e.g., Rye Telephone Company, Inc. and U S West Communications, Inc., Memorandum Opinion and Order, CC Docket No. 96-45, released July 18, 2000, at ¶ 10. (Rye would receive no universal service support for the acquired exchange, but stated that it would convert the transferred customers to a digital architecture, "which will improve transmission quality and provide other benefits to the customers.")

[37]Universal Service Order at ¶ 308.

## D. PRTC Should No Longer Receive LTS Support

PRTC currently receives approximately $89 million in LTS support.[38] As the Commission discussed in the Thirteenth Universal Service Order, "[a]s a result of its merger with GTE Holdings (Puerto Rico) LLC, the Commission's rules require PRTC to convert to price-cap regulation, after which it would no longer be eligible to remain in the NECA pool or to receive LTS."[39] One of the effects of the MAG plan's proposed elimination of the "all or nothing rule" would be to allow PRTC to remain in the NECA pool and continue receiving LTS.

The Commission should not modify its rules in a manner that would permit Verizon to continue drawing LTS support for PRTC. First, GTE specifically committed during the transfer of control proceeding to converting PRTC to price-cap regulation and removing PRTC from the NECA pool. Second, the Commission has already found that requiring LECs to depool "was not unfair in light of the strong need for" the all or nothing rule.[40] Finally, in light of the significant increase in the size of the universal service fund that could result from other features of the MAG plan, the Commission should make every effort to ensure that unnecessary support flows -- such as $89 million for the largest local exchange carrier in the nation -- are discontinued.

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[38]Federal-State Joint Board on Universal Service, Thirteenth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, released December 8, 2000, at ¶ 7 (Thirteenth Universal Service Order).

[39]Thirteenth Universal Service Order at ¶ 7 n.26.

[40]LEC Price Cap Order, 5 FCC Rcd at 6820.

## V. The Commission May Not Impose MAG's Proposed Pricing Rule on IXCs

The MAG plan proposes a new rule, Section 64.1801, which would regulate non-dominant IXC pricing in certain respects. Specifically, the proposed rule would (1) require IXCs to offer the same optional calling plans to customers in rural and urban areas; (2) prohibit IXCs operating in rural and high-cost areas from imposing minimum monthly charges on their residential customers; and (3) require IXCs operating in rural and high cost areas to pass through to long distance customers the savings that IXCs realize from lower access rates charged by path A and Path B LECs.[41]

It would be arbitrary and capricious for the Commission to impose such a pricing rule on interexchange carriers. As the Commission has consistently found, the interexchange market is characterized by "intense rivalry."[42] Based on such findings, the Commission has, since 1995, classified all interexchange carriers as nondominant, i.e., carriers that do not possess market power. Because "it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, . . . that violate Section 201 or 202 of the Act," the Commission has determined that it will rely on market forces and the complaint process to achieve the objectives of the Act.[43] Nowhere does MAG provide even the slightest basis for the Commission to change course and impose a rule governing interexchange carrier pricing.

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[41]MAG Proposal, Exhibit 3-14, proposed rule 64.1801(c).

[42]Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271, 3308 (1995).

[43]See, e.g., Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order, 11 FCC Rcd 20730, 20742-20743 (1996).

## VI. Conclusion

For the reasons stated herein, the Commission should not adopt the MAG plan in its current form.

Respectfully submitted,
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February 26, 2001

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on February 26, 2001.

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## CERTIFICATE OF SERVICE

I, Vivian I. Lee, do hereby certify that copies of the foregoing Comments were sent via first class mail, postage paid, to the following on this 26th Day of February, 2001.

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